



Office of Program Policy Analysis And Government Accountability



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Review of Hotel and Restaurant Regulation

Report Abstract

- In 1995, the U.S. Food and Drug Administration noted that Florida's Hotel and Restaurant Regulation program did not discourage repeat violations. This problem has not been resolved.
- The program could improve its effectiveness and possibly reduce costs by adopting a risk-based inspection system and targeting its resources to those food and lodging establishments that pose the greatest public health risk.
- Weaknesses in the program's management information system, management turnover, and the lack of an effective performance assessment system have contributed to these problems.

Purpose of Review

The Joint Legislative Auditing Committee requested that we review the Hotel and Restaurant Regulation Program administered by the Department of Business and Professional Regulation. We focused our study on the program's enforcement and inspection processes and issues contributing to problems in these areas.

Background

The state regulates public food service and lodging establishments, and temporary food events to protect the public health, safety, and welfare. The Division of Hotels and Restaurants licenses and inspects these establishments and events to ensure compliance with state health and safety standards. The program is important because unsafe lodging structures and unsanitary food handling practices by food establishments can pose serious risks to the public.

As of June 1996, the Division regulated approximately 30,000 public lodging establishments, 35,000 public food service establishments, and 5,000 temporary food service events. Regulated lodging establishments include hotels, motels, rooming houses, transient and non-transient apartments, and resort condominiums and dwellings.¹ Regulated food service establishments include restaurants, mobile food dispensing vehicles, caterers, vending machines, theme park food carts, and satellite service units that prepare and/or serve individual meals for immediate consumption on the premises, take out, or delivery. The Division also regulates temporary food service events, such as seafood festivals, chili cook-offs, and ethnic food festivals.

¹ Transient apartments are apartment units or buildings that are made available to guests on a temporary basis. Nontransient apartments are apartment units or buildings that are available for rent to tenants as their residence.

To avoid duplication of effort, the Division has entered into cooperative agreements with other state agencies that regulate public establishments. Under these agreements, the Division regulates food service establishments, while the Department of Health and Rehabilitative Services regulates entities that serve food in institutional settings such as hospitals, schools, and correctional facilities. Additionally, the Department of Agriculture and Consumer Services regulates food processing and manufacturing plants, grocery stores with delicatessens, and establishments serving prepackaged foods.

The program is self-supporting. Receipts for licenses, fees, fines, and miscellaneous revenues are deposited to the Hotel and Restaurant Trust Fund. The Legislature appropriates funds from this trust fund to the Division. In fiscal year 1995-96, Trust Fund revenues were \$18,072,259 and the Division expended \$16,966,390. The Trust Fund balance on June 30, 1996, was \$6,358,693.

Findings

The Division has not established an effective system to sanction establishments for repeat violations.

In October 1995, the U.S. Food and Drug Administration (FDA) issued a report critical of the Division of Hotels and Restaurants. The FDA report criticized the Division for failing to cite restaurants for critical violations known to cause foodborne illness and failing to use enforcement actions that discourage repeat violators. Although the Division has taken steps to address FDA's concerns, we concluded that the Division continues to lack an effective system for sanctioning establishments that repeatedly violate state standards.

By practicing a policy where an establishment can be sanctioned only if it is operating without a license or fails to correct a cited violation within a set time limit, the Division does not deter facilities from having consistent patterns of violations over time. As a result, an inspector may find the same sanitation deficiencies every time he or she visits an establishment, but the facility will not be sanctioned if the operator corrects the violation each time. A more effective system would sanction facilities that consistently fail to comply with health and safety standards.

Adopting a risk-based inspection system, as exists in some other states, could improve public health protection and could reduce costs.

Florida law requires the Division to inspect public lodging and food service establishments at least biannually. It also requires the Division to establish a system to determine how often various categories of food and lodging establishments should be inspected. The Division's inspection frequency system does not take into account that different categories of public food and lodging establishments present varying degrees of risk to the public and, therefore, require different frequencies of inspections. This is particularly true for food service establishments. Adopting a system to target more frequent inspections of those establishments that pose the greatest risk to the public would increase public health protection and maximize the use of resources.

While the Department has established different inspection frequency goals for the various types of lodging establishments, it has set a goal to inspect all food establishments three times a year. Division staff explained that this is a compromise between Florida law, which requires a minimum of two annual inspections, and FDA, which recommends inspecting establishments four times a year. Summary data are

not readily available from the Division to determine whether individual establishments are inspected three times a year. However, as shown in Exhibit 1, the Division conducted an average of 2.4 inspections of each public food and lodging establishment during fiscal year 1995-96.

Adopting a risk-based inspection system to target those establishments that pose the greatest potential risk to the public would likely increase the program's effectiveness and could reduce costs. For example, the Division is inspecting all categories of establishments more frequently than required by statute. (See Exhibit 1.) The Division's risk assessment may likely determine that some restaurants pose a greater potential health risk to the public than do other types of establishments, such as resort condominiums or nontransient apartments. Under such a risk-based system, the Division would conduct more frequent inspections of establishments

that it believes pose the greatest potential public health risks, and would conduct less frequent inspections of establishments that pose lower degrees of risk. For example, establishments with histories of sanitation violations could be inspected quarterly, while those with good compliance histories could be inspected according to the statutory minimum.

Other states have adopted risk-based approaches to regulating food service establishments. For example, Massachusetts, Connecticut, and New York categorize food establishments according to the risks they pose and vary inspection frequencies accordingly. In New York, a large restaurant serving a high volume of meals, with a poor sanitation history, and a menu requiring food to be prepared days in advance is considered a high-risk restaurant. These restaurants are inspected more frequently than small restaurants that prepare meals for immediate consumption and have exemplary sanitation histories.

Exhibit 1
The Division Inspects Public Food and Lodging Establishments
More Frequently Than Statutory Minimums

| Type of Establishment ¹ | Licensed Establishments | Minimum Inspections Required By Law | Minimum Inspections Required By Rule | Total Inspections Conducted By Division | Inspections Conducted in Excess of Statutory Minimum |
|--|-------------------------|-------------------------------------|--------------------------------------|---|--|
| Public Food Establishments | 35,261 | 2 | 3 | 96,964 | 26,442 |
| Hotels, Motels, Rooming Houses, and Transient Apartments | 6,969 | 2 | 3 | 20,313 | 6,375 |
| Resort Condominiums and Dwellings | 5,981 | 0 | 1 | 5,981 | 5,981 |
| Nontransient Apartments | 17,451 | 2 | 2 | 36,751 | 1,849 |
| Total | 65,662 | -- | -- | 160,009 Average 2.4 | 40,647 (38%) |

¹ Does not include the 4,500 inspections conducted by the Division for temporary food service events. Inspection minimums for these events are not specified in statute.

Source: Division of Hotels and Restaurants 1995-96 Annual Report, Florida Statutes, and Florida Administrative Code.

Under risk-based inspections, the Division could establish an inspection point system to rate the potential risks posed by establishments. The Division could use this system to levy points against facilities that have been cited for health and safety violations. This system would be similar to the point system used by the Department of Highway Safety and Motor Vehicles to sanction drivers who commit traffic violations. This would enable the Division to target establishments that consistently violate regulatory standards, as it could more frequently inspect, and suspend licenses or impose greater fines against those establishments that repeatedly violate critical public health and safety standards.

Adopting a risk-based inspection system could also reduce costs if it enabled the Division to conduct fewer total inspections. The Division may be able to conserve resources by reducing the number of inspections it requires for establishments whose practices and histories of compliance pose little risk to the public. For example, reducing the number of inspections conducted by 5% would save about \$250,000 a year. The Legislature increased the Division's appropriation by \$1 million in fiscal year 1996-97 for 29 additional regulatory staff.

The Division lacks an effective method of identifying unregulated food and lodging establishments and temporary food service events.

Unregulated food and lodging establishments can pose public health risks because they are not inspected to help ensure that they comply with health and safety requirements. Temporary food service events such as seafood festivals can also pose health risks if they are run by vendors who lack knowledge of safe food handling practices.

There are no accurate data on the number of unregulated food and lodging establishments and temporary food service events that exist in Florida.

The Division estimates that about 12,000 food and lodging establishments are operating without a license, and that anywhere between 1,500 and 18,000 unregulated temporary food service events occur each year.

The Division has not developed a systematic method of identifying unregulated establishments and events. Division managers indicated that they would need approximately \$1.5 million to hire additional staff to identify, license, and inspect these establishments. However, the Division has no specific plan for how these staff would systematically identify these establishments.

A more economical and effective method for identifying unlicensed establishments and events would be to match the Division's regulatory database with those of other state and local agencies. For example, the Division could match its database of licensed food and lodging establishments against the Department of Revenue's database of registered businesses and the occupational license databases maintained by county and municipal governments. California, Georgia, and Louisiana use similar methods to identify unlicensed establishments. Like these states, the Division could use such database matching to identify unregulated public food and lodging establishments that pay state taxes or have local occupational licenses. As discussed in the next finding, to employ this method, the Division will need to make fundamental changes in its management information system.

Weaknesses in the Division's management information system, frequent management turnover, and the lack of program performance measures have contributed to its regulatory problems.

We identified three factors that have contributed to the weaknesses in the Division's inspection and enforcement activities: (1) limitations in the

Division's management information system; (2) frequent management turnover; and (3) the lack of a program performance measurement system.

Weaknesses in Information System. The Division's management information system is outdated and does not produce the types of information the Division needs to effectively manage the program. The system was originally developed in 1976 and is maintained on the Department of Management Services' (DMS) mainframe computer at a cost of \$700,000 a year. The system maintains a database on public food and lodging establishments that tracks inspection data on each regulated food and lodging establishment. The system produces an 8,000-page report that is distributed monthly to selected Division staff. This report is not easy for managers to use to track program operations and target those establishments posing the most threat to the public health.

The Division cannot effectively analyze risk-based information in its database to identify compliance trends and produce management reports. For example, the system cannot readily run comparisons between inspectors and districts to identify inconsistent enforcement actions. To obtain this information the Division must submit a special programming request to the DMS, which charges \$50 per hour and may take several weeks to respond to the request. Two independent reports commissioned by the Department in 1991 chronicled the high cost and general inefficiency resulting from the Division's reliance on outdated computer technology.²

An updated management information system would enable the Division to better track program activities, manage program operations, and establish a risk-based inspection system. The system could also be used to identify common health and safety problems

² Strategic Information Planning Study for the State of Florida Department of Business Regulation; Andersen Consulting Group, 1991. An Assessment of the Computer Applications in the Department of Business Regulation; Thomas James, Danny Hawkins, Gene Sherron, 1991.

found by inspectors, which the Division could then use to help educate establishments in how to avoid these problems.

The Department of Business and Professional Regulation is studying the option of creating a Department-wide computer system which would include the Division of Hotels and Restaurants. Alternatively, the Department of Business and Professional Regulation estimates that it could create a customized information system for the Division for approximately \$676,000. If neither of these alternatives prove suitable, the Division may wish to work with the Council on Competitive Government to contract out for an economical system that meets its information needs.

Management Turnover. The program's high leadership turnover in recent years has contributed to the program's weaknesses. Since 1990, the Department has had four agency secretaries and four Division directors. In addition, there have been times when the Division has had no acting or appointed director to supervise its operations. This has limited the Division's ability to address various problems. For example, the alternative of comparing the Division's regulatory database to those of other agencies to identify unregulated establishments was being pursued prior to the 1993 merger of the Department of Business Regulation and the Department of Professional Regulation. This initiative was dropped after the merger and the resulting management changes. Similarly, staff responsible for producing the 8,000-page monthly management report have attempted to work with each new Division director to address the report's severe limitations. Efforts to resolve this issue have been limited because each time a new director has been appointed staff have had to reinitiate their efforts.

Lack of Program Performance Measures. The Division's lack of an effective program performance measurement system has also contributed to the

program's problems. Neither the Department's agency strategic plan nor its legislative budget requests include specific measurable goals, objectives, or performance measures that can be used to evaluate the Division's effectiveness in safeguarding the public health, safety, and welfare. Its strategic plan goals are stated in general terms, are not related to particular programs, and focus on inputs rather than outputs and outcomes. The plan contains only one objective related to hotel and restaurant regulation: "[b]y June 2,000, 100% of all food service establishments and lodging facilities will be licensed and inspected according to the schedules set forth in section 509, Florida Statutes." Whether or not these inspections will be effective in protecting the public and how such effectiveness will be assessed is not stated. Similarly, the Division's three most recent legislative budget requests do not include measurable objectives or workload data.

The Department's lack of performance measurement systems has been a recurring problem. Prior reports issued by our Office have commented on the Department's need to establish program evaluation systems.³ As part of the state's Performance-Based Program Budgeting initiative, it will be critical for the Division to establish program goals and output and outcome measures to enable the Legislature to evaluate the program's effectiveness.

³ Report No. 12156, Performance Audit of the Consumer Complaint Process Administered by the Department of Business and Professional Regulation, issued August 17, 1993, and Report No. 12308, Performance Audit of the Division of Real Estate in the Department of Business and Professional Regulation, issued May 25, 1994.

Conclusions and Recommendations

The Hotel and Restaurant Regulation Program lacks an effective enforcement system to discourage repeat violations and lacks an effective method of identifying unregulated establishments and temporary food events. The Division's failure to discourage repeat violations was cited by the FDA in a 1995 review of the Program. The Division could improve its effectiveness and possibly reduce costs by adopting a risk-based system and targeting its resources to those food and lodging establishments that pose the greatest public health risk. Weaknesses in the program's management information system, management turnover, and the lack of an effective performance assessment system have contributed to these problems.

We recommend that the Division:

- Conduct a formal risk assessment to determine the relative risks various categories of food and lodging establishments pose and base inspection frequencies upon these risks. In developing a risk-based system, the Division should build on the experiences of other states that have adopted this approach.
- Upgrade its management information system to enable it to better track inspection and enforcement trends. The system should provide on-line access to management data and efficiently produce management reports as needed.
- Improve the detection of unregulated establishments by matching its improved hotel and restaurant database against other government databases, such as the Department of Revenue's database of registered businesses.
- Develop measurable goals, objectives, and performance measures for the Hotel and Restaurant Regulation Program so that the Legislature and Division managers can monitor the extent to which the program is achieving its stated purpose.

Agency Response

Executive Summary Response From the Department of Business and Professional Regulation

In response to recent reviews of its programs, the Division of Hotels and Restaurants is currently stressing quality rather than quantity of inspections. Consideration of public risk has been instrumental in determining its current inspection frequency system. The division anticipates implementation of a Hazard Analysis Critical Control Point (HACCP) model inspection system as supported by the FDA, which concentrates on those points in the food preparation process when contamination is most likely. With the assistance of food safety experts nationwide, the division's HACCP program promises better protection for the public. A review of Illinois's program revealed that Florida's food programs do not easily relate to other states' risk-based programs, since delineation of categories has been relegated to three separate agencies in Florida.

Instituting a points system like the one used by the Division of Driver Licenses to penalize its licensees would be problematic in its application since such a system requires authority not currently provided in the division's statutes. The division discontinued a points system on which to determine inspection frequency in 1995 partly because of the inadequacy of the system to draw sharp contrasts between the performance records of establishments. The division prefers to address these issues through its current program improvement initiatives, which include: monitoring of food service employee training;

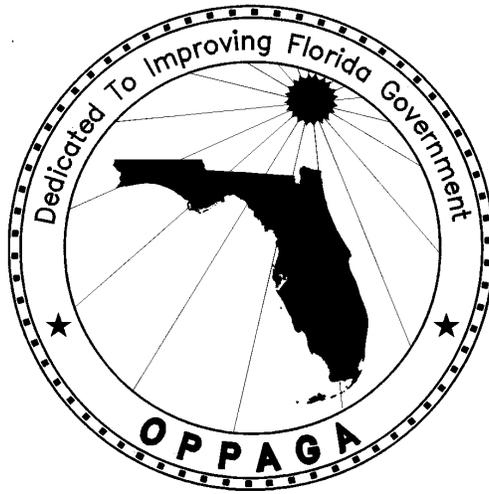
additional educational efforts for division staff and industry; improved enforcement guidelines; adoption of the 1995 FDA Food Code; and continued oversight by the division's Quality Assurance Program. The division will continue to study other states' programs for applicability to modified HACCP implementation.

The division will upgrade its outdated mainframe computer system through the technology consolidation project soon to begin with a company contracted with the DBPR. The resultant PC-based client-server environment will allow vastly improved reporting capabilities within the wide area network with which all offices will be on-line within a month. Also, the division is committed to implementing an optical mark reader (scanner) project during this fiscal year to greatly enhance data entry of inspection information.

The division licenses any licensable establishment in its jurisdiction when found operating in violation of its authority. The division will also actively pursue completion of the contract necessary to participate in the Department of Revenue's information sharing program. Through matching information from the DOR and local authority databases with division licensing data, the division expects to identify and locate many unlicensed lodging establishments. The division will continue to regulate as many temporary food service events as possible with its limited resources.

Changes in division management and policy objectives has made adoption of measurable goals difficult until recently, but the division will soon address this matter.

The Florida Legislature
Office of Program Policy Analysis
and Government Accountability



Mission Statement

This Office provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision-making, to ensure government accountability, and to recommend the best use of public resources.

This project was conducted in accordance with applicable evaluation standards. Copies of this report may be obtained by telephone (904/488-1023 or 800/531-2477), by FAX (904/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302). Web site: <http://www.state.fl.us/oppaga/>

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